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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Thailand: Legal and extralegal threats to freedom of expression

1. The Asian Legal Resource Centre (ALRC) wishes to raise grave concerns about the intensification of legal and extralegal threats to freedom of expression in Thailand. Carried out in the name of protecting the monarchy, this range of threats constitutes the entrenchment of the normalization of the violation of human rights and curtailment of freedom of expression. This statement is the eighth on this topic that the ALRC has submitted to the Council since May 2011. During the seventeenth session of the Council in May 2011, the ALRC highlighted the rise in the legal and unofficial use of Article 112 of the Criminal Code and the 2007 Computer Crimes Act (CCA) to constrict freedom of expression and intimidate citizens critical of the monarchy (A/HRC/17/NGO/27). During the nineteenth session in February 2012, the ALRC detailed some of the threats faced both by those who have expressed critical views of the monarchy, both legal and extralegal, as well as those who have expressed concern about these threats (A/HRC/19/NGO/55). During the twentieth session in June 2012, the ALRC raised concerns about the weak evidentiary basis of convictions made under Article 112 and the CCA (A/HRC/20/NGO/37) and the concerning conditions surrounding the death in prison custody of Amphon Tangnoppakul on 8 May 2012, then serving a 20-year sentence for four alleged violations of Article 112 and the CCA (A/HRC/20/NGO/38). During the twenty-second session in March 2013, the ALRC highlighted the January 2013 conviction under Article 112 of human rights defender and labour rights activist Somyot Prueksakasemsuk (A/HRC/22/NGO/44). During the twenty-third session in June 2013, the ALRC emphasized the regularization of the crisis of freedom of expression, and noted that constriction of speech had become constitutive of political and social life in Thailand (A/HRC/23/NGO/42). During the twenty-fourth session in October 2013, the ALRC emphasized the dangers of the normalization of the violation of human rights in the name of protecting the monarchy (A/HRC/24/NGO/35).

2. Over the course of the prior seven statements, the ALRC first noted with surprise the active use of measures to constrict speech, then tracked the expansion of this use, and finally, the entrenchment of the foreclosure of freedom of speech. The ALRC is again raising the issue of freedom of expression with the Council because the law has continued to be actively used to violate the right to freedom of expression and extralegal threats to freedom of expression, and human rights broadly, have emerged in Thailand. In the statement submitted to the Council in October 2013, the ALRC warned that the routine denial of bail and the use of vague references to national security to attempt to legitimize the violation of the human rights of those with dissident views had become normalized. In this statement, the ALRC wishes to alert the Human Rights Council to ongoing developments that indicate the urgency, and growing difficulty, of addressing the crisis of freedom of expression in Thailand.

3. There are two primary laws that are used to both legally constrict freedom of speech in Thailand and create a broad climate of fear for those who hold dissenting opinions. Article 112 of the Criminal Code criminalizes criticism of the monarchy and mandates that, "Whoever defames, insults or threatens the King, Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years." The 2007 Computer Crimes Act (CCA), which was promulgated as part of Thailand's compliance as a signatory to the United Nations Convention Against Transnational Organized Crime, has been used to target web editors and websites identified as critical of the monarchy or dissident in other ways. The CCA provides for penalties of up to five years per count in cases that are judged to have involved the dissemination or hosting of information deemed threatening to national security, of which the institution of the monarchy is identified as a key part. While Article 112 has been part of the Criminal Code since the last major revision in 1957, available statistics suggest that there has been a dramatic increase in the number of complaints filed since the 19 September 2006 coup; how often these complaints become formal charges and lead to prosecutions is information that the Government of Thailand has continuously failed to provide up to the present. The CCA has often been used in combination with Article 112 in the seven years since its promulgation; similar to the use of Article 112, the Government of Thailand has not made complete usage information available. This failure to make information public about the frequency and conditions of use of both laws creates fear and diminishes the space for freedom of expression through the use of secrecy and creation of uncertainty.

4. In addition to the continued use of the law to constrict speech, recent events indicate that there is an increase in the potential for extralegal violence against those who hold dissident views. During the statement submitted to the nineteenth session (A/HRC/19/NGO/55) in March 2012, the ALRC warned the Council about the threats made against members of the Khana Nitirat, a group of progressive legal academics at Thammasat University who proposed reform

of Article 112. In response, hundreds of threats were posted online against the group, calling for the members to be attacked, killed, beheaded, and burned alive. Subsequently, one of the members of the group, Professor Worachet Pakeerut, was assaulted outside his office at Thammasat by two young men who later told the police that they attacked him because they disagreed with his ideas.

5. On February 12, 2014, an attack on another progressive academic, Professor Somsak Jeamteerasakul, a history professor at Thammasat University and outspoken political and cultural critic, indicates a renewed increase in the permissive climate for extralegal intimidation and violence of those who hold dissenting opinions. Two assailants fired repeated gunshots at the home and car of Professor Somsak. Although he did not sustain any physical injuries, the damage to his car and house indicate that the violence was intended to be deadly. The attack took place during the day, while Professor Somsak was at home, which lends further credence to the idea that the perpetrators intended to inflict harm or death and that they were unconcerned with being seen.

6. Professor Somsak Jeamteerasakul's writing and teaching have inspired many students and citizens to carefully examine the past, present, and persecution of the powerless by the powerful in Thailand. His criticism often makes those in power uncomfortable, and there has been an attempt to use Article 112 to curtail his speech. In April 2011, a police investigation began against him in relation to a complaint likely made in relation to comments he made in article about a Princess Chulabhorn's (one of the daughters of the current Thai king) appearance on a talk show. This case is still ongoing, even though Article 112 does not apply to Princess Chulabhorn, and so there is no legal restriction of comments made about her. In early February 2014, the deputy spokesman of the Royal Thai Army commented that the Army plans to file additional complaints of violations of Article 112 against Professor Somsak in relation to comments he posted on the social media website Facebook.

7. The ALRC is particularly concerned that the violent attack on Professor Somsak has come so close following the comments of the deputy spokesman of the Royal Thai Army regarding further proceedings under Article 112 against him. While the identities and motivations of the attackers remain unknown pending police investigation, the temporal link to the formal and legal action taken against him by the Royal Thai Army is striking. In addition, given the severe polarization in Thai society which began when the protracted protests against the elected government began in November 2013, this extralegal attack on Professor Somsak is a further indication of the ongoing breakdown of the rule of law in Thailand.

8. The ALRC would like to remind the Thai government that they are a state party to the International Covenant on Civil and Political Rights (ICCPR) and are bound to uphold the human rights principles named therein. In particular, the ALRC would like to call on the Thai state to uphold Article 19 of the ICCPR, in particular, paragraph 1, which guarantees that, "Everyone shall have the right to hold opinions without interference," and paragraph 2, which guarantees that, "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." It is imperative that the Thai state's protection of the rights guaranteed in Article 19 and the remainder of the ICCPR be active, rather than passive. Upholding the ICCPR necessarily entails protecting those whose views are dissident and ensuring that they can safely exercise their political freedom. Failure to do so will signal to vigilante actors that attacking those who hold different views are acceptable within the Thai polity.

9. The ALRC would also like to remind the Government of Thailand that under Article 19 of the ICCPR, restrictions on the right to freedom of expression are only permissible under two circumstances: "for respect of the rights or reputations of others" and "for the protection of national security or of public order (ordre public), or of public health or morals." Although Article 112 is classified as a crime against national security within the Criminal Code of Thailand, and this, along with the need to protect the monarchy, is frequently cited by the Government of Thailand when faced with the criticism that the measure is in tension with the ICCPR, a precise explanation of the logic for categorizing the measure as such has not been provided to date. Until this explanation is provided, the constriction of freedom of expression is arbitrary and contributes to a climate hostile to human rights.

10. The ALRC is gravely concerned about the ongoing legal and extralegal threats to freedom of expression in Thailand, and their effects on human rights, justice, and the rule of law in Thailand. The intensification of extralegal

threats to dissenting citizens' rights and lives as indicated by the February 2014 attack on Professor Somsak Jeamteerasakul represents a new point of crisis in the longstanding climate of constriction of political freedom in Thailand.

11. In view of the above, the Asian Legal Resource Center calls on the UN Human Rights Council to:

a. Call on the Government of Thailand to ensure that a full investigation into the attack on Professor Somsak Jeamteerasakul is carried out and bring the men who shot at his house and car to justice.

b. Call on the Government of Thailand to release all those convicted or facing charges under Article 112 and the 2007 Computer Crimes Act. At a minimum, those currently being held should immediately be granted bail while their cases are in the Criminal or Appeal Courts.

c. Demand that the Government of Thailand revoke Article 112 of the Criminal Code and the 2007 Computer Crimes Act.

d. Urge the Government of Thailand to allow and support the full exercise of freedom of expression and political freedom, consistent with the terms of the Universal Declaration of Human Rights, to which it is a signatory, and the International Covenant on Civil and Political Rights, to which it is a state party.

e. Request the Special Rapporteur on the freedom of opinion and expression to continue ongoing monitoring and research about the broad situation of constriction of rights and individual cases in Thailand; and, the Working Group on Arbitrary Detention to continue to monitor and report on those cases of persons arbitrarily detained under Article 112.